

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA,

Case No. 2:14-CR-262 JCM (GWF)

Plaintiff(s),

ORDER

v.

PATRICK LYNN WASHINGTON,

Defendant(s).

Presently before the court is petitioner Patrick Washington's ("Washington") motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. (ECF No. 124). The government filed a response (ECF No. 126), to which Washington replied (ECF No. 129).

I. Background

On August 5, 2014, a federal grand jury in Nevada returned an indictment charging Washington with one count of violating 18 U.S.C. §§ 922(g)(1) and 924(a)(2) by being a felon in possession of a firearm, and one count of violating those statutes by being a felon in possession of ammunition. (ECF No. 1).

Washington pled guilty without a plea agreement. (ECF No. 89). The court entered a judgment of conviction on December 28, 2015. (ECF No. 111). Washington appealed (ECF No. 113), and the Ninth Circuit affirmed. (ECF No. 120). On June 7, 2018, Washington filed, *pro se*, the instant 28 U.S.C. § 2255 motion to vacate, set aside, or correct sentence. (ECF No. 124).

II. Legal Standard

a. Petition for writ of habeas corpus

Pursuant to 28 U.S.C. § 2255, a person in custody under a judgment by a district court may file a motion under this section if he seeks a determination that (1) the judgment violates the

1 Constitution or laws of the United States, (2) the court lacked jurisdiction to enter the judgment,
 2 (3) the sentence exceeded the maximum allowed by law, or (4) the judgment or sentence is
 3 otherwise subject to collateral review. Further, section (4)(b) states that "if the motion is not
 4 dismissed, the judge must order the United States attorney to file an answer, motion, or other
 5 response within a fixed time." U.S. R. Gov'g 2255 Proceedings(4)(b).

6 *b. Ineffective assistance of counsel*

7 To establish ineffective assistance of counsel, petitioner must demonstrate that the
 8 counsel's conduct was not "within the range of competence demanded of attorneys in criminal
 9 cases," and that there is a "reasonable probability that, but for counsel's unprofessional errors, the
 10 result of the proceeding would have been different." *Strickland v. Washington*, 466 U.S. 668, 687,
 11 694, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). The purpose of the effective assistance guarantee
 12 is "to insure that criminal petitioners receive a fair trial." *Id.* at 689.

13 **III. Discussion**

14 In Washington's motion, he argues that he received ineffective assistance of counsel when
 15 his trial attorney failed to seek certain disclosures under Federal Rule of Criminal Procedure 16.¹
 16 (ECF No. 124). However, Washington cites Rule 16(a)(1)(C), which is the subsection of the rule
 17 pertaining to organizational defendants. *Id.* As the government correctly notes in its response to
 18 Washington's motion, Rule 16(a)(1)(C) does not apply to Washington, as he is an individual rather
 19 than an organization. *See* Fed. R. Crim. P. 16(a)(1)(C).

20 However, Washington further argues that, regardless of any disclosures sought under Rule
 21 16, his Constitutional rights were violated when his victim's 9-1-1 call was admitted as evidence
 22 against him at trial. (ECF No. 124 at 2). Washington suggests that his trial attorney's failure to
 23 seek suppression of the 9-1-1 call constitutes ineffective assistance of counsel. *Id.* According to
 24 Washington, the substance of the victim's 9-1-1 call constitutes testimony to which Washington
 25 was never given the opportunity to respond in open court, in violation of his rights under the
 26 Confrontation Clause. *Id.* *See Crawford v. Washington*, 541 U.S. 36 (2004).

27
 28 ¹ The nature of the disclosures Washington argues ought to have been sought is unclear, as
 he has filed the instant motion on a *pro se* basis.

Therefore, the court finds that Washington has failed to show that his constitutional rights were violated, or that he received ineffective assistance of counsel. Further, a district court may deny a 28 U.S.C. § 2255 motion without an evidentiary hearing if the defendant's allegations, viewed against the record, "either do not state a claim for relief or are so palpably incredible or patently frivolous as to warrant summary dismissal." *United States v. Burrows*, 872 F.2d 915, 917 (9th Cir. 1989).

IV. Conclusion

IT IS HEREBY ORDERED, ADJUDGED, and DECREED that Patrick Washington's ("Washington") motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 (ECF No. 124) be, and the same hereby is, DENIED.

James C. Mahan
UNITED STATES DISTRICT JUDGE